

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1359

Caesar V. Vaca

Movant - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:22-cv-00604-DGK)

JUDGMENT

Before COLLOTON, SHEPHERD, and KELLY, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied.

Appellant's motions for appointment of counsel and for leave to proceed on appeal in forma pauperis are denied as moot. The appeal is dismissed.

April 24, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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Appeal from U.S. District Court for the Western District of Missouri - Kansas City
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ORDER

The petition for rehearing by the panel is denied.

June 06, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Respondent argues that Movant has not shown a denial of his right to effective assistance of trial counsel because (1) any error regarding the admission into evidence of his Kansas conviction was harmless given the overwhelming evidence of his guilt, (2) the record fails to show that Mora's testimony constituted perjury, (3) counsel made a legitimate, strategic choice in not calling Liberda as a witness, and (4) any objection regarding the upward variance would not have changed Movant's sentence. Doc. 10, pp. 11-18 (response); *see Reed v. Norris*, 195 F.3d 1004, 1006 (8th Cir. 1999) (unnecessary to discuss reasonableness of counsel's conduct given the overwhelming evidence of guilt, making it impossible for the prisoner to demonstrate *Strickland* prejudice). Respondent argues that Movant has not shown a denial of his right to effective assistance of appellate counsel because (5) an argument based on *Rehaif* would not have succeeded on appeal, and (6) counsel actually and unsuccessfully challenged the admission of the Kansas conviction. Doc. 10, pp. 18-21 (response). The Court agrees with Respondent's argument and finds that Movant did not suffer ineffective assistance of trial or appellate counsel.

As a supplemental ground for relief, Movant argues that his firearm conviction is invalidated by *New York Rifle & Pistol Assn v. Bruen*, 142 S.Ct. 2111 (2022): "[T]he felon-in-possession statute [cannot] constitutionally apply to people with non-violent felony convictions[.]" Doc. 5-1, p. 4 (addendum to § 2255 motion). However, as Respondent correctly notes, other courts that have considered the same argument have rejected it. Doc. 10, p. 31 (response); *see Range v. Attorney General*, 53 F.4th 262 (3d Cir. 2022). As explained in *Range*, *New York Rifle & Pistol* provides Movant with no basis for relief.

The Court has considered all arguments not specifically addressed herein and finds that none would affect the outcome of this case. For the reasons set out above, the Court denies Movant's motion for relief pursuant to 28 U.S.C. § 2255. The Court also declines to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2) (certificate of appealability may be issued "only if [Movant] has made a substantial showing of the denial of a constitutional right"). The Clerk of the Court shall enter judgment accordingly and dismiss this case.

So **ORDERED**.

/s/ Greg Kays
GREG KAYS
UNITED STATES DISTRICT JUDGE

Dated: January 17, 2023.

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available in the
Clerk's Office.**